IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.1161 OF 2002

Sunil Dinkar Ghare .. Appellant

versus

The State of Maharashtra .. Respondents

...

Mr.Uday Warunjikar for the appellant.

Mr.A.M. Shringarpure, APP for the State.

CORAM : V.M. KANADE, J

DATED : 15th September 2004.

ORAL JUDGEMENT :-

1. The appellant is challenging the judgement and order passed by the First Adhoc Addl. District Judge and Asstt. Sessions Judge, Karad in Sessions Case no.220 of 2000 dated 29th December 2001 whereby the appellant original accused no.2 was convicted u/s.307 r/w sec.34 of the IPC and sentenced to

suffer RI for seven years and to pay a fine of Rs.1,000/- and in default to suffer RI for three months. He is also convicted u/s.326 r/w sec.34 of the IPC and sentenced to suffer RI for five years and to pay a fine of Rs.500/- each and also u/s.324 r/w sec and was sentenced to suffer RI for three years.

2. The prosecution case is that the complainant Arjun Pol and the appellant herein were friends and both of them used to reside at Aga-shivnagar, Tal.Karad. The appellant thereafter started residing elsewhere. On 26th November 1998, the appellant along with Ashok Mane went to the complainant's house on his invitation. Thereafter, the appellant invited his friends at Gharewadi and in the evening at 6.30 p.m, the complainant and his friends reached there at the appellant's house. They had dinner and thereafter at 9.30 p.m, the complainant and his friend decided to go home. At that time, the appellant along with his friend came there and assaulted them. The prosecution case is that all of them assaulted Ashok Mane with a sickle on various parts of his body. The appellant also gave a fist blow on his mouth and as a result two of

his teeth were uprooted. The complainant was admitted in a hospital. His other friend was given treatment in a private dispensary. A complaint was lodged and statements were recorded by the prosecution. The appellant and two others were charged u/s.307, 306, 334 of the IPC and they were convicted under the aforesaid charges. The learned counsel for the appellant submitted that the prosecution had not proved the commission of the offence beyond reasonable doubt and that the appellant ought to have been acquitted. It was submitted that the prosecution had not proved common intention on the part of the appellant and that he had only given a fist blow on the mouth of the complainant. He submitted that he did not share the common intention along with the others as the said incident had taken place on the spur of the moment. He has taken through the evidence on record and also the judgement and order of the trial Court. He submitted that none of the witnesses have stated the motive behind the said assault. He submitted that even assuming that the prosecution had proved that the appellant had common intention in assaulting the complainant. Offence u/s.307 was not proved as the injuries were not on the vital part. At the

highest, he could have been convicted under section 326. The learned APP has submitted that the injured persons have stated in their evidence that the appellant along with others had assaulted with a sickle. Blood stained clothes were produced by the complainant and the Chemical Analyser's report clearly corroborated the evidence given by the eye witnesses.

3. In the present case, PW no.1 Hemlata Joshi has stated that the complainant Arjun Pol was admitted in the Orthopedic Department and there was (i) incised wound on the left shoulder which was bone and muscle deep. (ii) there was amputation of left wrist-joint and (iii) CLW left side mastoid region. She has stated in her evidence that injuries no.1 and 2 were grievous injuries and rest of the two injuries were simple in nature. Similarly, evidence of Dr.Sandeep Raghunath Patil, PW no.11, he has corroborated the medical evidence of PW no.1 and has stated that he had performed operation of amputation of the left hand of Arjun Pol. The oral evidence of PW nos.1 and 11 has been supported by the medical case papers which are produced. Similarly, PW no.2 has assaulted Sanjay

Korde and has caused injuries on his neck. To prove the said injuries, the prosecution examined Dr.Pradeep Patil who has stated that there was a superficial cut on the left side neck and he had given 6 stitches to the said injured and had then referred the patient to the Krishna hospital Karad. The complainant PW no.6 Ashok Pol has given a graphic account for what conspired on the day of the incident. His testimony has not been shaken in the cross examination. The evidence of the complainant has been corroborated by PW no.7 Sanjay Kisan Korde who has re-iterated what the complainant has stated in the evidence.

4. In my view, the prosecution has proved beyond reasonable doubt that the appellant had along with others assaulted the complainant and Sanjay Korde with sickle. The next question which falls for consideration is whether offence u/s.307 is made out by the prosecution. From the evidence of the doctors who examined, it is no doubt proved that the complainant had suffered number of injuries on various parts of the body and that his left wrist had to be amputed as a result of the said injury. However, it cannot be said that the appellant had

any intention of committing the murder of the complainant and his friend Sanjay Korde. The doctor who has examined Sanjay Korde has stated that there was only a superficial wound on the neck of Sanjay Korde and that he had stitched that wound and had referred him to the Cottage hospital, Karad. The injuries which were found on the person of the complainant are no doubt grievous injuries in as much as his left wrist had to be amputed. However, it cannot be said that these injuries were on the vital parts of the body. I am therefore of the view that the offence u/s.307 has not been proved. The incident in question appears to have happened on the spur of the moment. Initially, the appellant and his friends had gone to the hospital of the complainant in the afternoon and thereafter, in the evening the appellant had invited the complainant and his friend to his house and from that place, they had gone to have dinner while going back to the house of the complainant. According to Sanjay Korde, there was some altercation between the complainant and the appellant and thereafter the appellant and his friends went into the house and brought sickles and assaulted the complainant and his friend. A suggestion has been put to Sanjay

Korde that complainant had insisted that the appellant Sunil should accompany him for the purpose of recovering money and on the refusal of the appellant to accompany the complainant. Thereafter, the complainant had brought a sword and iron bar and thereafter had tried to assault the appellant as a result of which the appellant had brought a sickle to defend himself. The fact remains that there was a sudden fight and thereafter, the appellant had assaulted the complainant. Looking at the nature of the injuries, it cannot be said that the appellant had an intention to commit the murder of the complainant or that the injuries which were inflicted were otherwise sufficient in the ordinary course of nature to cause death. Thus, in my view, the appellant is acquitted of the charge u/s.307 of the IPC.

5. However, the fact remains that grievous injuries were inflicted by the appellant on the complainant as a result of which the left wrist had to be amputed. Thus, the charge u/s.326 and 324 in my view has been proved against the appellant.

6. In the result, appeal is partly allowed.

7. The appellant is acquitted of the charge u/s.307 which is levelled against him. He is convicted u/s.326 r/w sec.34 of the IPC and conviction and sentence imposed upon the appellant by the trial Court is confirmed. Similarly, conviction and sentence u/s.324 r/w sec.34 of the IPC imposed by the trial Court is confirmed. Both these sentences to run concurrently.

8. Appellant will be entitled to have set off for the period during which he was in jail. From the record it appears that the appellant has already undergone four years and six months of sentence. He shall be entitled to the usual remission.

9. Appeal is partly allowed in the above terms and disposed of accordingly.

V.M. KANADE, J